

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the amendment of ARM) NOTICE OF AMENDMENT
2.6.202, 2.6.203, and 2.6.209)
pertaining to state vehicle use)

TO: All Concerned Persons

1. On October 11, 2012, the Department of Administration published MAR Notice No. 2-6-472 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 1897 of the 2012 Montana Administrative Register, Issue Number 19.

2. The department has amended ARM 2.6.203 as proposed. The department has amended ARM 2.6.202 and ARM 2.6.209 with the following changes from the original proposals, new matter underlined, deleted matter interlined:

2.6.202 DEFINITIONS As used in this subchapter, the following definitions apply:

~~(1) "Measurable amount of alcohol" means the alcohol concentration of the person's breath or blood is .02 or more.~~

(2) through (4)(d) remain as proposed, but are renumbered (1) through (3)(d).

(4) "Under the influence" means that as a result of taking into the body alcohol, drugs, or any combination of alcohol and drugs, a person's ability to safely operate a state vehicle has been diminished.

AUTH: 2-17-424, MCA

IMP: 2-9-201, 2-9-305, 2-17-424, MCA

2.6.209 ALCOHOL AND DRUGS (1) No person may be under the influence while on state business ~~may drive a vehicle for state business who has a measurable amount of alcohol, illegal drugs, or improperly used prescription drugs in their system.~~

~~(2) No person may drive a vehicle for state business who has taken any legally prescribed drug if that drug affects the person's ability to safely operate the vehicle.~~

(3) remains as proposed, but is renumbered (2).

AUTH: 2-17-424, MCA

IMP: 2-9-201, 2-9-305, 2-17-424, MCA

3. The department has thoroughly considered the comments received. A summary of the comments received and the department's responses follow:

COMMENT #1: The Department of Corrections (DOC) provided written comments addressing the definition of "state vehicle." The DOC commented that since the definition already includes any machinery or apparatus attached to a state vehicle, keeping the word "trailer" in the definition as proposed is redundant.

RESPONSE #1: The department thanks DOC for its comments. However, since on occasion state employees drive their personal vehicles (which are not state vehicles) while pulling state trailers, keeping the word "trailer" in the definition is appropriate.

COMMENT #2: DOC also provided written comments regarding the definition of "measurable amount of alcohol." DOC believes that this definition will not provide adequate guidance to those driving state vehicles and that the .02 standard does not apply to adults. Instead, DOC suggests the following standard: "No state employee may drive a vehicle for state business after having consumed alcohol, illegal drugs, improperly used prescription drugs or any legally prescribed drug, if that drug affects the person's ability to safely operate the vehicle."

RESPONSE #2: The department appreciates the DOC's comments. The department agrees with the comments and has amended the rule to essentially reflect the DOC's recommendation. The department has adopted the definition of "under the influence" from 61-8-401(3)(a), MCA, which is a traffic regulation statute. Since this definition also encompasses the consumption of legally prescribed drugs when driving a state vehicle, the department has deleted ARM 2.6.209(2).

By: /s/ Janet R. Kelly
Janet R. Kelly, Director
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By: /s/ Michael P. Manion
Michael P. Manion, Rule Reviewer
Department of Administration

Certified to the Secretary of State December 10, 2012.